

Collaborative Efforts for Emergency Planning Legal and Ethical Issues in Healthcare Emergency Management

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Faculty

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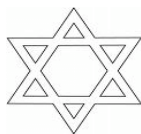
Ethical Questions Presented

- What are the Ethical and Legal issues in “strategically falling back” in provision of health care services?
 - How to sort patients to determine priority for treatment?
 - What criteria will be used?
 - Who will develop those criteria?

John’s Five Action Principles

- To tell the truth, the whole truth and nothing but the truth
- “We’ll Sing in the Sunshine”
- Casper the Friendly Ghost
- It’s not about me
- The “Nike Principle”

Religious Ethical Principles



American Historical Documents Ethical Principles

- Declaration of Independence
- United States Constitution

Professional Ethics

- Hippocratic Oath and Medical Ethics
- Augustine's "Just War"
- Engineer's Ethics
- The Belmont Report and IRBs
- The Public Health Code of Ethics
- Public Officer/Employee Ethics Laws

The Concept of Death

- Is the causing or allowing of death *always* ethically bad?
 - Cain and Abel
 - Instructions to wipe out the people of Canaan
 - *Lex talionis*, cities of refuge and the "Avenger of Blood"
- Is euthanasia ever an option?

Justifications for Causing Death

- State Sanctioned Execution
- Defense of Self or Another
- Augustine's "Just War"
 - Lawful authority
 - Defensive in nature
 - Proper motive

Justifications for Causing Death

- Carried out by legitimate government
- Proportional
- Modern Rules of Warfare
 - Geneva Conventions

Oath of Hippocrates Medical Ethics

- "Primum non nocere" – first do no harm
- *Always* look to the good of the patient
- Place a high value on human life
- Perform only within one's training and skill

Oath of Hippocrates Medical Ethics

- Refrain from improper relations with patient
- Maintain patient's secrets inviolate
- Do not violate community laws or morals

Summary – Professional Ethics

- Death is acceptable
- Do no harm
- Patient first
- ↑Value on life
- Proper relations
- Confidentiality
- Follow law & morals
- Duty to care
- Balance

Summary – Professional Ethics

- Not discriminate
- Not abandon
- “Sacred duty”
- Respect person
- Beneficence
- Justice
- Individual rights
- Community
- Empowerment

Summary – Professional Ethics

- Use information
- Timeliness
- Diversity
- Confidentiality
- Collaboration
- Competence
- Public trust
- Interdependence
- Not abuse public position

What *Really* Happens in an Emergency?

- Are there really no rules?

Ultimate Decisions - Rationing

- Rationing the Right to Life
 - Euthanasia
- Rationing staff time in treatment
 - Triage
- Rationing preventatives
 - Vaccines

Ultimate Decisions - Rationing

- Rationing treatments
 - Ventilators and medicines
- Rationing staff time
 - When to “take it to the house?”

Utilitarianism vs. Egalitarianism

- Jeremy Bentham's theory of utilitarianism
 - Right or good based on the consequences being good
- Immanuel Kant's deontology theory (egalitarianism)
 - What is right or good is based on meeting duties and obligations
- These contradistinguished ideas will clash over and over

Modern Hybrid Triage

- Focus and goal change
- Uses both concepts
 - Utilitarian approach
 - Egalitarian methods
- Requires sorting out into 3-4 groups
- Treat those in the group before going to the next lower group

Ethical Responsibilities in Triage

- Plan NOW! See "Bryant's Rule"
- Establish a Triage Review Committee
 - Plan
 - Oversee
 - Evaluate post-event
- Engage the public in the discussion in some way
- Employ an experienced triage officer

Ventilators: The Gist of the Plan

- Four tiers based on respiratory failure
 - Withhold ventilators starting with Tier 1
 - *Withdraw* ventilators starting with Tiers 3 and 4
- What would St. Augustine say?

Ventilators: The Gist of the Plan

- The same discussion applies to all such allocations of medicines, supplies or equipment

Alabama's "Top Down" Development

- Plan written at State level, our "day job"
- Partnership with Hospital Association
- Added to the State EOP
- Invoked by Governor's order
- Grants immunity to professionals

Altered Standards of Care

- When is it permissible to provide less than the care normally or traditionally expected standard of care?
- Goals
- Focus
- Ethical Standards

Legal Issues

- What is legal may not be ethical
- What is ethical may not be legal
- Legal Issues will be criminal, civil and regulatory and administrative law issues

Legal Issues

- Changes need to be made to the laws and legal precedents made *per se* to allow rules to be changed or by executive directive such as PDD
- Change will require *consensus* or at least *consultation with stake-holders*

Individual Civil Liability

- Malpractice and professional liability
- Invasion of privacy, confidentiality breach
- General tort liability – negligence or an act or omission
 - Economic loss
 - Non-economic loss
- Gross negligence, wanton misconduct, bad faith

Corporate or Group Liability

- Corporate negligence
- Vicarious liability/Respondeat superior
- Negligent recruitment/training/supervision
- Premises liability

Failure to Plan

- Three possibilities for negligence liability
 - Absence of a plan
 - Inadequate plan
 - Failure to follow plan

Failure to Plan

- Reasonable care
 - Probability of an event, gravity of potential injury, and burden in adequate precaution
- See *Lacoste v. Pendleton Methodist Hospital*. Supreme Court of Louisiana. 2006

Failure to Plan

- Forseeability
 - *U.S. v. Carroll Towing Company*
- Punitive Damages
 - Wanton and willful misconduct

Rationing and Altered Standards – Making it Legal?

- Change the laws at federal and state levels directly
- Change laws to allow for regulatory changes
- Consider pre-drafting emergency orders for the Governor to sign in an event invoking the altered standards of care

Emergency Proclamations

- *Red Scare* – Genesis of Emergency management
- Under *Code of Ala. 1975, § 31-9-2*, Governor proclaims an “emergency” defined as
 - Enemy attack, sabotage
 - “Other hostile action”
 - Fire, flood and “other natural causes”

Emergency Proclamations

- “Public Health Emergencies,” a special class
 - Alabama adopts the “Model Act” definition

Personal/Corporate Liability Protections

- Except for willful misconduct, gross negligence or bad faith, any “emergency management worker” and organizations are granted state officer immunity
 - *Ala. Code § 31-9-16,17*

Personal/Corporate Liability Protections

- Requirements for licenses to practice do NOT apply
- “Emergency worker” is anyone helping out whether paid or not

Shakespeare Said

- “The first thing we do, let’s kill all the lawyers”
– Henry VI, Part 2
- Well, maybe not. But let’s not let the lawyers get in the way of good public health.